

**Department Of Industrial Relations
Title 8, Chapter 8, Subchapter 2
Office of Self Insurance Plans**

NOTICE OF PROPOSED RULEMAKING

November 30, 2004

Notice is hereby given that the Director of the Department of Industrial Relations proposes to permanently adopt the regulations described below after considering all comments, objections and recommendations regarding the proposed action.

Proposed Regulatory Action

The Director of the Department of Industrial Relations adopted on an emergency basis on July 6, 2004 amendments to sections 15220, 15220.1, 15220.3, and 15220.4 of Title 8 of the California Code of Regulations in order to implement, interpret and make specific Labor Code Section 3701.8, relating to new alternative composite deposit program for private self insurers of workers' compensation liabilities. The Director then re-adopted the amendments effective November 3, 2004. The Director is now accepting written comments on the regulations.

The Department has not scheduled a formal public hearing on this proposed action. However, the Director will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

Written Comment Period

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to Office of Self Insurance Plans. The written comment period closes at 5:00 p.m. on January 24, 2005. The Department will consider only comments post marked or received at the Office of Self Insurance Plans by that date. Submit comments to:

Mark Johnson, Manager
Office of Self Insurance Plans
2265 Watt Avenue, Suite 1
Sacramento, CA 95825

Authority and Reference

Labor Code Sections 55 and 3702.10, authorizes the Director of Industrial Relations to adopt the proposed regulations, which would implement and make specific the provisions of Labor Code Sections 3700, 3701 and 3701.8.

Informative Digest and Policy Statement Overview

The Department of Industrial Relations proposes to amend existing sections 15220, 15220.1, 15220.3, and 15220.4 in Title 8 of the California Code of Regulations. These sections help to implement the new deposit program for qualified private self insurers known as the alternative composite deposit program. Labor Code Section 3701.8 requires self insured employers identified by the Office of Self Insurance Plans as eligible to participate in the program. The program requires the eligible self insurer to secure its worker's compensation liabilities through the Self Insurers Security Fund (Fund). The self insurer secures its liabilities through the payment of a deposit assessment to the Fund. A self insurer participating in the program is no longer required to post an individual security deposit for the portion of its liabilities covered by the Fund.

Existing Section 15220 established participation criteria in the alternative composite deposit program and provides that the Manager of Self Insurance Plan will identify each eligible private self insured employer as a fully participating member, a partially participating member, or as excluded from participation. All self insurers identified as eligible for the program are required to participate in the alternative composite deposit. The section allows the Self Insurers' Security Fund to request, and the Manager to approve, specific self insurers that may otherwise be included in the program be excluded. This proposal amends the section to allow the Security Fund to request, and the Manager to approve, that employers that are otherwise excluded from participation in the program be included. The existing section requires that when more than one credit rating exists for a self insured employer, the lowest credit rating will be used to determine eligibility. This proposal amends the section to require that the most recent, not the lowest, credit rating will be used.

Existing section 15220.1 identifies a method for evaluating the financial status of each private self insurer company without an annual independently prepared financial statement or published credit rating and has established a new form, A4-7, Financial Summary, for rating the financial stability of that self insurer. The existing section requires the private self insurer to provide the financial information needed to evaluate the company. This proposal amends the section to eliminate the use of the form for supplying the financial information and allows the director to obtain the same financial information in a format that may be readily shared with the Security Fund in order to calculate the participating employers' assessments, and also allows the Director to require that the financial information be submitted electronically beginning in 2005. This proposal also amends the section to make specific authorization pursuant to Labor Code Section 3701.8(b)(5) for the Manager of Self Insurance Plans to share the financial information with the Security Fund.

Existing section 15220.3 established the Security Fund provisions for securing the liabilities covered by the Alternative Composite Deposit. This proposal amends the section to clarify that the Security Fund's own indebtedness is among the non-exclusive list of means of security instruments in the composite deposit. This proposal also amends the section to specify that the Security Fund shall submit the list of self insurers that it proposes to include in the composite deposit in whole or in part, and require each participating self insured employer to post its security deposit increase within 60 days of notification of an increase or by July 1 each year, whichever is sooner.

Existing Section 15220.4 specifies the manner of collection of deposit assessments from self insured employers and the manner in which portions of the assessments, the Default Loss Fund Fee, Excess Liability Protection Fee, and the Pre-Existing Deposit Shortfall Fee, are calculated. This proposal will amend the section to require that the most recent credit rating, not the lowest, will be used in calculating assessments, and that the Security Fund may issue supplemental assessments in case of the need for repayment of the Security Fund's indebtedness incurred as contemplated by Section 15220.3, or if the deposit requirement for a self insured employer increases after the initial assessment has been made.

Disclosures Regarding the Proposed Action

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Determination of Mandate

The Director of Industrial Relations has determined that the proposed regulations do not impose a mandate on local agencies or school districts or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendment will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these regulations do not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California constitution."

Cost or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or schools are required to be reimbursed in accordance with Government Code Sections 17500 through 17630.

Other Non-discretionary Costs or Savings Imposed on Local Agencies or School Districts

This proposal does not impose non-discretionary cost or savings imposed on local agencies or school districts.

Costs or Savings in Federal Funding to the State

This proposal will not result in costs or savings in federal funding to the state.

Impact on Housing Costs

The Department of Industrial Relations has made an initial determination that the amendment of this regulation will not have a significant effect on housing costs.

Cost Impact on Representative Private Persons or Businesses

The department is not aware of any significant cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Individual private self insurers may find the new deposit assessment to be higher than current costs for providing individual security deposits. However, because of the need to increase the pre-existing deposit shortfall fund, the costs would have increased substantially even if the composite deposit program were not enacted. Even so, any cost increases should be offset by the release or reduction of individually posted security deposits to participating self insurers, thus making other assets available to those employers. In addition, the deposit assessments are expected to be reduced over

time. Costs are determined by the Security Fund's Board of Trustees, not the Department of Industrial Relations, pursuant to Labor Code Section 3701.8.

Impact on Business

The Department of Industrial Relations has made an initial determination that the amendment of this regulation will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California business to compete with businesses in other states.

Small Business Impact

This regulation will have no adverse impact on small business because it does not impose any new requirements on employers nor does it amend any existing requirements impacting small business. In addition, small businesses are not affected by Self Insurance regulations, since small businesses cannot qualify for self insurance and the banks affected by these regulations are not defined as small businesses.

Assessment of Job/Business Creation or Elimination

The Department has made an assessment that the proposed amendment to the regulation would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, and (3) affect the expansion of businesses currently doing business within California.

Alternatives Considered

The Director must determine that no reasonable alternative has been considered by the agency or has otherwise been identified and brought to it's attention that would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. No reasonable alternative has been brought to the attention of the Director that would be less effective or less burdensome to affected persons than the proposed action.

Contact Persons

Inquiries concerning the proposed administrative action may be directed to:

Mark Johnson, Manager
Office of Self Insurance Plans
2265 Watt Avenue, Suite 1
Sacramento, CA 95825
916-483-3392
mjohnson@dir.ca.gov

The backup contact person for these inquiries is:

Tina Freese
Office of Self Insurance Plans
2265 Watt Avenue, Suite 1
Sacramento, CA 95825
916-483-3392
tfreese@dir.ca.gov

Questions on the substance of the proposed regulation should be directed to Mr. Johnson.

Please direct requests for copies of the proposed text, the initial statement of reasons, the modified text of the regulations, if any, or any other rulemaking documents to Tina Freese at the above address.

Availability of Changed or Modified Text

After the close of the forty-five (45) day public comment period, the Director of the Department may adopt the proposed regulations. As a result of public comments, either oral or written, that are received by the Director regarding this proposal, the Director may determine that changes to the proposed regulation are appropriate. If the Director makes substantive modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Director adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Tina Freese at the above address. The Department will accept further written comments on the modified regulations for 15 days after the date on which they are made available.

Availability of Initial Statement of Reasons, Rulemaking File And Express Terms of the Proposed Regulations

The Agency has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Office of Self Insurance Plans at 2265 Watt Avenue, Suite 1, Sacramento, California 95825 during normal business working hours. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons and the proposed text of the regulations. Copies of these items are available, upon request, from the Agency Contact Person designated in this Notice.

Availability of Final Statement of Reasons

The Department is required to prepare a Final Statement of Reasons. Once the Department has prepared a Final Statement of Reasons, a copy will be made available to anyone who requests a copy. Requests for copies should be addressed to the Department Contact Person identified in this Notice.

Department Internet Website

The Department maintains an Internet website for the electronic publication and distribution of written material. Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at <http://sip.dir.ca.gov>.